IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 402 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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DAYALJIBHAI MANIBHAI PATEL & 1 - Appellant(s)
Versus
ERACHSHA DHANJISHA VARIYAVA - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 19.09.85 passed by the Motor Accident Claims Tribunal (Main), Surat in MACP No. 680 of 1983 whereby the Tribunal has awarded an amount of Rs. 17,000/- by way of compensation to the original claimant with running interest at the rate of 12% per annum with proportionate costs.

2. The present respondent-original claimant had filed claim petition seeking compensation to the tune of Rs. 22000/- for the damages caused to his Ambassador Car in

respect of the accident which occurred on 08.11.83 at about 10.30 pm near Udhna-Bhestan Road when a tempo bearing no. GTO 2318 driven by original opponent no.1 coming from the opposite direction dashed against the car. The driver of the car was injured and the said car sustained damages for which the claim petition was filed. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellants has contended that the Tribunal has failed to draw proper inference from the evidence on record and has awarded Rs. 5000/- under the head of economic loss which is not in accordance with law. In this context he has relied on the decision of the Madhya Pradesh High Court in the case of Rajkumar v. Mahendra Singh and others reported in 1985 ACJ 103.

3.1 He has further contended that since the original claimant had received Rs. 12000/- from his insurer, the Tribunal ought to have deducted that amount from the amount of award and therefore the award is required to be interfered with.

4. Heard learned counsel for the appellants and have

gone through the award of the Tribunal. The Tribunal in the award has observed that the present respondent-original claimant is entitled to Rs. 5000/- by way of economic loss suffered by him on account of non-user of the car. However, going through the decision of the Madhya Pradesh High Court in the case of Rajkumar(supra) it is held that a claim for compensation for 'loss of business' on account of the damaged vehicle remaining idle during its repairs cannot be laid before the Claims Tribunal and a party aggrieved on this count will be free to file a civil suit and section 110-F of the Act does not bar the jurisdiction of Civil Court. In that view of the matter, the contention raised by the appellant with regard to Rs.5000/- awarded by the Tribunal under the head of economic loss is required to be accepted and the same has to be interfered with.

4.1 However, as far as the second contention of the appellant is concerned, I am of the view that the same cannot be accepted in-as-much as since the amount of Rs. 12,000/- was received from the insurance company by the respondent in lieu of the contract between the parties whereby the respondent used to pay regular premium and the benefit of the said contract cannot be extended to the present appellant.

5. In the premises aforesaid, the appeal is partly allowed. The present respondent-original claimant shall be entitled to a sum of Rs. 12,000/- by way of compensation. The award of the Tribunal is modified accordingly and the rest of the award shall remain the same. No order as to costs.

(K.S. JHAVERI, J.)

Divya//